

SENATE BILL 114

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2lr0064

By: **Chair, Education, Health, and Environmental Affairs Committee (By Request – Departmental – Environment)**

Introduced and read first time: January 18, 2012

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Environment – Controlled Hazardous Substance Driver Certification –**
3 **Elimination**

4 FOR the purpose of repealing a requirement that the Department of the Environment
5 certify certain drivers of controlled hazardous substance vehicles; repealing a
6 requirement that certain drivers of controlled hazardous substance vehicles
7 carry a certain certificate; repealing requirements that certain drivers submit
8 certain evidence and pay a certain fee; altering a certain definition; repealing a
9 certain definition; and generally relating to the elimination of controlled
10 hazardous substance driver certificates.

11 BY repealing and reenacting, with amendments,
12 Article – Environment
13 Section 7–201, 7–249, 7–253, and 7–257
14 Annotated Code of Maryland
15 (2007 Replacement Volume and 2011 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Environment
18 Section 7–252
19 Annotated Code of Maryland
20 (2007 Replacement Volume and 2011 Supplement)
21 (As enacted by Chapter 240 of the Acts of the General Assembly of 1982)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article – Environment**

25 7–201.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) In this subtitle the following words have the meanings indicated.

2 (b) “Controlled hazardous substance” means:

3 (1) Any hazardous substance that the Department identifies as a
4 controlled hazardous substance under this subtitle; or

5 (2) Low-level nuclear waste.

6 (c) (1) “Controlled hazardous substance facility” means a disposal
7 structure, system, or geographic area, designated by the Department for treatment,
8 storage related to treatment or disposal, or disposal of controlled hazardous
9 substances.

10 (2) “Controlled hazardous substance facility” includes:

11 (i) A low-level nuclear waste facility; and

12 (ii) An operating landfill that, under § 7-232(b) of this subtitle,
13 has a permit equivalent to a facility permit.

14 (d) “Controlled hazardous substance hauler” means a person who has a
15 hauler certificate issued by the Department to transport controlled hazardous
16 substances.

17 (e) “Controlled hazardous substance vehicle” means a vehicle that the
18 Department has certified as suitable for use to transport controlled hazardous
19 substances.

20 (f) “Controlled hazardous substance vehicle driver” means a person [whom
21 the Department has certified to] **WHO [operate] OPERATES** a controlled hazardous
22 substance vehicle.

23 (g) “Council” means the Controlled Hazardous Substances Advisory Council.

24 (h) “Discharge” means:

25 (1) The addition, introduction, leaking, spilling, or emitting of a
26 pollutant into the waters of this State; or

27 (2) The placing of a pollutant in a location where the pollutant is likely
28 to pollute.

29 (i) [“Driver certificate” means a certificate issued by the Department for a
30 person to be a controlled hazardous substance vehicle driver.

1 (j)] “Facility permit” means a permit issued by the Department to establish,
2 operate, or maintain a controlled hazardous substance facility.

3 [(k)] (J) “Federal act” means the Comprehensive Environmental Response,
4 Compensation, and Liability Act of 1980, as amended through January 1, 2003.

5 [(l)] (K) “Hauler certificate” means a certificate issued by the Department
6 that permits a person to be a controlled hazardous substance hauler.

7 [(m)] (L) “Hazardous substance” means any substance:

8 (1) Defined as a hazardous substance under § 101(14) of the federal
9 act; or

10 (2) Identified as a controlled hazardous substance by the Department
11 in the Code of Maryland Regulations.

12 [(n)] (M) “Incineration” means thermal treatment or decomposition of a
13 waste heat.

14 [(o)] (N) “Lender” means a person who is:

15 (1) A holder of a mortgage or deed of trust on a site or a security
16 interest in property located on a site; or

17 (2) A holder of a mortgage or deed of trust who acquires title through
18 foreclosure or deed in lieu of foreclosure.

19 [(p)] (O) “Low-level nuclear waste” means a substance that:

20 (1) Contains or is contaminated with radioactive material emitting
21 primarily beta or gamma radiation; and

22 (2) Is neither transuranic waste nor high-level nuclear waste.

23 [(q)] (P) “Low-level nuclear waste facility” means a controlled hazardous
24 substance facility for low-level nuclear waste.

25 [(r)] (Q) “Low-level nuclear waste facility permit” means a facility permit
26 issued by the Department for a low-level nuclear waste facility.

27 [(s)] (R) “Person” includes the federal government, this State, any county,
28 municipal corporation, or other political subdivision of this State, and any of their
29 units.

1 **[(t)] (S)** “Release” means the addition, introduction, leaking, spilling,
2 emitting, discharging, escaping, or leaching of any hazardous substance into the
3 environment.

4 **[(u)] (T)** (1) “Responsible person” means any person who:

5 (i) Is the owner or operator of a vehicle or a site containing a
6 hazardous substance;

7 (ii) At the time of disposal of any hazardous substance, was the
8 owner or operator of any site at which the hazardous substance was disposed;

9 (iii) By contract, agreement, or otherwise, arranged for disposal
10 or treatment, or arranged with a transporter for transport for disposal or treatment, of
11 a hazardous substance owned or possessed by such person, by any other party or
12 entity, at any site owned or operated by another party or entity and containing such
13 hazardous substances; or

14 (iv) Accepts or accepted any hazardous substance for transport
15 to a disposal or treatment facility or any sites selected by the person.

16 (2) “Responsible person” does not include:

17 (i) A person who can establish by a preponderance of the
18 evidence that at the time the person acquired an interest in a site containing a
19 hazardous substance the person did not know and had no reason to know that any
20 hazardous substance which is the subject of the release or threatened release was
21 disposed of on, in, or at the site; however, any person claiming an exemption from
22 liability under this subparagraph must establish that the person had no reason to
23 know, in accordance with § 101(35)(B) of the federal act, and that the person satisfied
24 the requirements of § 107(b)(3)(a) of the federal act;

25 (ii) A person who acquired a property containing a hazardous
26 substance by inheritance or bequest at the death of the transferor;

27 (iii) A person who, without participating in the day-to-day
28 management of a site containing a hazardous substance, holds indicia of ownership in
29 the site or in property located on the site primarily to protect a valid and enforceable
30 lien unless that person directly causes the discharge of a hazardous substance on or
31 from the site;

32 (iv) A holder of a mortgage or deed of trust on a site containing a
33 hazardous substance or a holder of a security interest in property located on the site
34 who does not participate in the day-to-day management of the site unless that holder
35 directly causes the discharge of a hazardous substance on or from the site;

1 (v) A fiduciary who has legal title to a site containing a
2 hazardous substance or to property located on the site containing a hazardous
3 substance for purpose of administering an estate or trust of which the site or property
4 located on the site is a part unless the fiduciary:

5 1. Participates in the day-to-day management of the
6 site or property; or

7 2. Directly causes the discharge of a hazardous
8 substance on or from the site;

9 (vi) A holder of a mortgage or deed of trust who acquires title to
10 a site containing a hazardous substance through foreclosure or deed in lieu of
11 foreclosure who:

12 1. Does not participate in the day-to-day management
13 of the site; and

14 2. Does not directly cause the discharge of a hazardous
15 substance on or from the site;

16 (vii) Except in the case of gross negligence or willful misconduct,
17 an owner or operator who is:

18 1. A state, county, or municipal government;

19 2. Any other political subdivision of the State; or

20 3. Any unit of a state, county, or municipal government
21 or any other political subdivision;

22 (viii) A holder of a mortgage or deed of trust who acquires title to
23 an eligible property as defined in Subtitle 5 of this title subject to a written agreement
24 in accordance with Subtitle 5 of this title provided that the holder complies with the
25 requirements, prohibitions, and conditions of the agreement;

26 (ix) Subject to paragraph (3) of this subsection, a lender who
27 extends credit for the performance of removal or remedial actions conducted in
28 accordance with requirements imposed under this title who:

29 1. Has not caused or contributed to a release of
30 hazardous substances; and

31 2. Previous to extending that credit, is not a responsible
32 person at the site;

1 (x) Subject to paragraph (3) of this subsection, a lender who
2 takes action to protect or preserve a mortgage or deed of trust on a site or a security
3 interest in property located on a site at which a release or threatened release of a
4 hazardous substance has occurred, by stabilizing, containing, removing, or preventing
5 the release of a hazardous substance in a manner that does not cause or contribute to
6 a release or significantly increase the threat of release of a hazardous substance at the
7 site if:

8 1. The lender provides advance written notice of its
9 actions to the Department or in the event of an emergency in which action is required
10 within 2 hours, provides notice by telephone;

11 2. The lender, previous to taking the action, is not a
12 responsible person for the site; and

13 3. The action taken does not violate a provision of this
14 article; or

15 (xi) A person who receives a response action plan approval letter
16 as an inculpable person or the person's successor in title who is also an inculpable
17 person under Subtitle 5 of this title and who does not cause or contribute to new
18 contamination or exacerbate existing contamination as provided in §§ 7-505 and
19 7-514 of this title.

20 (3) A lender taking action to protect or preserve a mortgage or deed of
21 trust or security interest in a property located on a site, who causes or contributes to a
22 release of a hazardous substance shall be liable solely for costs incurred as a result of
23 the release which the lender caused or to which the lender contributed unless the
24 lender was a responsible person prior to taking the action.

25 (4) (i) Paragraph (2)(i) of this subsection does not affect the
26 liability of a previous owner or previous operator of a site containing a hazardous
27 substance if the previous owner or previous operator is a responsible person under
28 paragraph (1)(ii) of this subsection.

29 (ii) Notwithstanding paragraph (2)(i) of this subsection, a
30 person shall be treated as a responsible person if the person:

31 1. Obtained actual knowledge of the release or
32 threatened release of a hazardous substance at a site when the person owned the real
33 property; and

34 2. Transferred ownership of the property after June 30,
35 1991 without disclosing this knowledge to the transferee.

36 (iii) Nothing in paragraph (2)(i) of this subsection shall affect the
37 liability under this subtitle of a person who, by any act or omission, caused or

1 contributed to the release or threatened release of a hazardous substance at a site
2 which is the subject of the action relating to the site if at the time of the act or
3 omission the person knew or had reason to know that the act or omission would cause
4 or contribute to the release or threatened release of a hazardous substance.

5 (5) Notwithstanding paragraph (2)(ii) of this subsection, a person shall
6 be treated as a responsible person if the person:

7 (i) Knew or had reason to know of the release or threatened
8 release of a hazardous substance at the site; and

9 (ii) Transferred ownership of the property after June 30, 1991
10 without disclosing this knowledge to the transferee.

11 (6) (i) For purposes of paragraph (2)(iii), (iv), (v), and (vi) of this
12 subsection, “management” means directing or controlling operations, production or
13 treatment of a hazardous substance, storage or disposal of a hazardous substance, or
14 remediation of a hazardous substance release.

15 (ii) “Management” does not include rendering advice on
16 financial matters, rendering financial assistance, or actions taken to protect or secure
17 the site or property located on the site if the advice, assistance, or actions do not
18 involve the treatment, storage, or disposal of a hazardous substance or remediation of
19 a hazardous substance release.

20 (7) A person who owns real property is not considered an owner or
21 operator of a vehicle or site containing a hazardous substance under paragraph (1)(i)
22 of this subsection solely by reason of contamination from a contiguous or otherwise
23 similarly situated real property if:

24 (i) The person does not own the contiguous or otherwise
25 similarly situated real property;

26 (ii) The person’s real property is or may be contaminated by a
27 release or threatened release of a hazardous substance from the contiguous to or
28 otherwise similarly situated real property; and

29 (iii) The person meets the requirements of Section 107(q) of the
30 federal act and any regulations adopted by the Department implementing or
31 interpreting the requirements of that section.

32 ~~[(v)]~~ (U) (1) “Solid waste” means any:

33 (i) Abandoned material or substance which is disposed of,
34 burned, or incinerated or accumulated, stored, or treated before or in lieu of being
35 disposed of, burned, or incinerated;

1 (ii) Material or substance which is recycled or accumulated,
2 stored, or treated before recycling; or

3 (iii) Material or substance which is considered inherently
4 waste-like.

5 (2) "Solid waste" does not include:

6 (i) Domestic sewage that passes through a sewer system to a
7 publicly owned treatment work for treatment;

8 (ii) Industrial wastewater discharges that are point source
9 discharges permitted under §§ 9-324 through 9-332 of this article;

10 (iii) Irrigation return flows;

11 (iv) Materials subjected to in-situ mining techniques which are
12 not removed from the ground as part of the extraction process; or

13 (v) Material that is excluded by any rule or regulation adopted
14 under this subtitle.

15 ~~[(w)]~~ **(V)** "Transuranic waste" means waste material that is measured or
16 assumed to contain at least 10 nanocuries or more of transuranic activity per gram of
17 waste.

18 ~~[(x)]~~ **(W)** "Treatment" means any method, technique, or process, including
19 neutralization, that is designed to change the physical, chemical, or biological
20 character or composition of any controlled hazardous substance so as to neutralize or
21 render the waste nonhazardous, safer for transport, or reduced in volume.

22 ~~[(y)]~~ **(X)** "Vehicle certificate" means a certificate issued by the Department
23 for a vehicle to be a controlled hazardous substance vehicle.

24 7-249.

25 (a) A person may not transport any controlled hazardous substance from any
26 source in this State or to any controlled hazardous substance facility in this State
27 unless:

28 (1) The person holds a hauler certificate; **AND**

29 (2) A vehicle certificate has been issued for the transporting vehicle[;
30 and

31 (3) A driver certificate has been issued for the vehicle driver].

1 (b) This section does not apply to the transportation of any controlled
2 hazardous substance that is:

3 (1) Used for residential purposes; or

4 (2) Regulated by the State Department of Agriculture.

5 [(c) The requirement of a driver certificate in subsection (a) of this section
6 does not apply to persons transporting hazardous waste generated and disposed of on
7 private property, if the hazardous waste is transported over roads maintained by the
8 generator or disposer.]

9 7-252.

10 (a) Each controlled hazardous substance hauler:

11 (1) Shall maintain a bond or other security that the Department
12 considers sufficient to indemnify this State for abatement of any pollution that may
13 result from the improper transportation of a controlled hazardous substance;

14 (2) Shall pay an annual vehicle certificate fee set by the Department
15 but not more than \$50;

16 (3) When transporting any controlled hazardous substance, shall:

17 (i) Carry the manifest [and the driver certificate] in the cab of
18 the controlled hazardous substance vehicle; and

19 (ii) Display prominently the vehicle certificate or affix the
20 vehicle certificate to the outside of the left door of the cab of the controlled hazardous
21 substance vehicle;

22 (4) May not transport a controlled hazardous substance unless the
23 controlled hazardous substance is labeled properly and in secure containers in
24 accordance with the rules and regulations of the Department that apply to that
25 particular controlled hazardous substance;

26 (5) On the request of any police officer, shall stop the controlled
27 hazardous substance vehicle and display to the police officer all required
28 documentation and allow inspection and sampling of the controlled hazardous
29 substance to determine if there is a violation of:

30 (i) The provisions of the vehicle certificate; **OR**

31 (ii) [The provisions of a driver certificate; or

1 (iii)] Any federal or state law;

2 (6) Except under the supervision of the Department during an
3 emergency, may not remove the controlled hazardous substance from the controlled
4 hazardous substance vehicle, or treat, store for any period of time, or mix any
5 controlled hazardous substance except in a controlled hazardous substance facility;
6 and

7 (7) Shall report periodically, on a form required by the Department,
8 the following information about shipments of controlled hazardous substances:

9 (i) The source of the controlled hazardous substance;

10 (ii) The nature of the controlled hazardous substance; and

11 (iii) The disposal destination.

12 (b) [(1) A driver certificate authorizes its holder to operate a vehicle
13 transporting hazardous substances while the certificate is effective.

14 (2)] Each controlled hazardous substance vehicle driver[:

15 (i) Shall submit to the Department evidence that the person
16 has received adequate training in the proper and safe handling of controlled
17 hazardous substances;

18 (ii) Shall pay an annual driver certificate fee set by the
19 Department but not more than \$20; and

20 (iii) When], **WHEN** transporting any controlled hazardous
21 substance, shall comply with subsection (a)(3), (4), (5), and (6) of this section and all
22 applicable State rules and regulations.

23 7-253.

24 If a person who generates a controlled hazardous substance desires to have it
25 transported to a controlled hazardous substance facility, the person:

26 (1) Except as is otherwise required by federal or State law, shall label
27 the controlled hazardous substance as required by the rules and regulations of the
28 Department;

29 (2) Shall provide for each controlled hazardous substance vehicle a
30 manifest that describes the controlled hazardous substance, including volume and
31 chemical, physical, and biological characteristics;

1 (3) Shall require evidence of a hauler certificate[, a driver certificate,]
2 and a vehicle certificate;

3 (4) May contract for treatment, storage, or disposal of a controlled
4 hazardous substance only with:

5 (i) A facility permit holder; or

6 (ii) A controlled hazardous substance hauler who has a valid
7 contract with a controlled hazardous substance facility for treatment, storage, or
8 disposal of controlled hazardous substances; and

9 (5) Shall report, from time to time on the form the Department
10 requires, the following information about shipments of controlled hazardous
11 substances:

12 (i) Source;

13 (ii) Name of the controlled hazardous substance hauler;

14 (iii) Destination intended by the controlled hazardous substance
15 hauler at the time of shipment;

16 (iv) Volume; and

17 (v) Nature.

18 7-257.

19 (a) In accordance with the Administrative Procedure Act and after notice and
20 hearing, the Department may suspend or revoke any facility permit, hauler certificate,
21 [driver certificate,] or vehicle certificate for violation of any federal or State law, rule,
22 or regulation that relates to controlled hazardous substances.

23 (b) The Department may revoke any facility permit issued under this
24 subtitle if the Department finds that:

25 (1) False or inaccurate information was contained in the application;

26 (2) Conditions or requirements of the facility permit have been or are
27 about to be violated;

28 (3) Substantial deviation from plans, specifications, or requirements
29 has occurred;

30 (4) The Department has been refused entry to the premises for the
31 purpose of inspecting to insure compliance with the conditions of the facility permit;

1 (5) A change in conditions exists that requires temporary or
2 permanent reduction or elimination of any permitted discharge;

3 (6) Any State or federal water quality standard or effluent limitation
4 has been or is threatened to be violated; or

5 (7) Any other good cause exists for revoking the permit.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 July 1, 2012.